



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,560	03/17/2004	Ellen Glassman	SOA-394	5967

23353 7590 12/27/2006  
RADER FISHMAN & GRAUER PLLC  
LION BUILDING  
1233 20TH STREET N.W., SUITE 501  
WASHINGTON, DC 20036

EXAMINER
----------

YOO, JASSON H

ART UNIT	PAPER NUMBER
----------	--------------

3714

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/27/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

88

<b>Office Action Summary</b>	<b>Application No.</b> 10/803,560	<b>Applicant(s)</b> GLASSMAN ET AL.	
	<b>Examiner</b> Jasson Yoo	<b>Art Unit</b> 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 October 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 28-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Objections*

The amendment to the claims filed on 10/10/06 does not comply with the requirements of 37 CFR 1.121(c) because previously presented claims are indicated as new. Amendments to the claims filed on or after July 30, 2003 must comply with 37 CFR 1.121(c) which states:

(c) *Claims.* Amendments to a claim must be made by rewriting the entire claim with all changes (e.g., additions and deletions) as indicated in this subsection, except when the claim is being canceled. Each amendment document that includes a change to an existing claim, cancellation of an existing claim or addition of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application. The claim listing, including the text of the claims, in the amendment document will serve to replace all prior versions of the claims, in the application. In the claim listing, the status of every claim must be indicated after its claim number by using one of the following identifiers in a parenthetical expression: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New), and (Not entered).

(1) *Claim listing.* All of the claims presented in a claim listing shall be presented in ascending numerical order. Consecutive claims having the same status of "canceled" or "not entered" may be aggregated into one statement (e.g., Claims 1–5 (canceled)). The claim listing shall commence on a separate sheet of the amendment document and the sheet(s) that contain the text of any part of the claims shall not contain any other part of the amendment.

(2) *When claim text with markings is required.* All claims being currently amended in an amendment paper shall be presented in the claim listing, indicate a status of "currently amended," and be submitted with markings to indicate the changes that have been made relative to the immediate prior version of the claims. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. Only claims having the status of "currently amended," or "withdrawn" if also being amended, shall include markings. If a withdrawn claim is currently amended, its status in the claim listing may be identified as "withdrawn—currently amended."

(3) *When claim text in clean version is required.* The text of all pending claims not being currently amended shall be presented in the claim listing in clean

Art Unit: 3714

version, *i.e.*, without any markings in the presentation of text. The presentation of a clean version of any claim having the status of "original," "withdrawn" or "previously presented" will constitute an assertion that it has not been changed relative to the immediate prior version, except to omit markings that may have been present in the immediate prior version of the claims of the status of "withdrawn" or "previously presented." Any claim added by amendment must be indicated with the status of "new" and presented in clean version, *i.e.*, without any underlining.

(4) *When claim text shall not be presented; canceling a claim.*

(i) No claim text shall be presented for any claim in the claim listing with the status of "canceled" or "not entered."

(ii) Cancellation of a claim shall be effected by an instruction to cancel a particular claim number. Identifying the status of a claim in the claim listing as "canceled" will constitute an instruction to cancel the claim.

(5) *Reinstatement of previously canceled claim.* A claim which was previously canceled may be reinstated only by adding the claim as a "new" claim with a new claim number.

### **35 USC § 112, 6<sup>th</sup> paragraph**

The claim limitation of claim 34 has been interpreted to invoke 35 U.S.C. 112, sixth paragraph. The Examiner interprets:

means for associating with a first portable device a first character having a first status level (US 2004/0244050, paragraphs 22, 91, 103-104);

means for detecting a second portable device within a proximity of the first portable device, a second character having a second status level being associated with the second portable device (paragraphs 32, 35-36, 41-50, 52, 93-94, 105-106);

means for comparing a first status level with the second status level (paragraphs 95-96); and

means for displaying on the first portable device a synchronized graphical display involving a contest between the first and second character, with an outcome of the

Art Unit: 3714

contest being determined based upon the comparison of the first and second status levels (paragraphs 30, 39, 64, 99, 101).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 28-44 are rejected under 35 U.S.C. 102(e) as being anticipated by Sitrick et al. (U.S. Patent No. 6,508,706).

Sitrick discloses the following:

Claim 28, 34, a method for displaying synchronized contests involving characters associated with portable devices, the method comprising:

associating with a first portable device (301 in Fig. 3) a first character (cols. 7:65-8:6) having a first status level (elements of the persona. col. 8:2-56);

detecting a second portable device (302 in Fig. 3) within a proximity of the first portable device (cols. 10:45-57, 11:32-40), a second character having a second status level (elements of the persona. col. 8:2-56) being associated with the second portable device (cols. 7:65-8:6);

comparing a first status level with the second status level (cols. 8:9-12, 9:15-56) ;  
and

displaying on the first portable device a an animated graphical display involving a contest (interactions between ETCs are based on the persona ranking, cols. 8:7-13, 9:15-56) between the first and second character (each portable device displays a synchronized animated graphical display, cols. 4:46-58, 6:55-62, 11:7-22), wherein the animated graphical display of the contest is displayed as a synchronized single continuous event on both of the first portable device and the second portable device (a unified game such as a role playing game can be played, col.4:16-26; where each device displays the active game, cols. 4:52-58, 6:55-62, 11:7-22), with an outcome of the contest being determined based upon the comparison of the first and second status levels (col. 11:1-31).

Claims 29, 35, 41, the synchronized graphical display is separately displayable on the second portable device while it is being displayed on the first portable device (each device can provide an active game with an associated display, col. 4:46-58).

Claims 30, 36, 42, a winner of the contest is shown in the synchronized graphical displays, the winner being based upon the comparison of the first and second status levels (comparison of the persona, cols. 8:15-56, 9:15-56).

Claims 31, 37, 43, the first status level is adjusted based upon the outcome of the contest (the persona is modified after an interaction, col. 8:9-12).

Claims 32, 38, a hierarchy module establishes the first status level (persona 210 in Figure 2, cols. 7:65-8:56).

Claims 33, 39, a wireless tag module respectively transmits and receives profile information corresponding to the first and second devices, the profile information accommodating association of the first and second characters with the first and second devices (acoustic interface 134 of Figure 1 transmits and receives profile information, in the form of game rules, and all other communications between all cards 301-307 of Figure 3).

Claim 40, a portable device for displaying synchronized contests involving characters associated with portable devices, the portable device comprising:

- a storage module, which stores an association of a first character having a first status level for the portable device (col. 10:32-35);

- a detection module, which detects a second portable device within a proximity of the portable device, a second character having a second status level being associated with the second portable device [An RF tag module for transmitting profile information to other devices and for receiving profile information from other devices (131 in Fig. 1).

Furthermore, an acoustic interface 134 of Figure 1 transmits and receives profile

information, in the form of game rules, and all other communications between all cards 301-307 of Figure 3];

a hierarchy module, which compares the first status level with the second status level (persona 210 in Figure 2, cols. 7:65-8:56);

a display module, which displays on the portable device an animated graphical display of a contest (interactions between ETCs are based on the persona ranking, cols. 8:7-13, 9:15-56) between the first and second characters, wherein the animated graphical display of the contest is displayed as a synchronized single continuous event on both the first portable device and the second portable device (a unified game such as a role playing game can be played, col.4:16-26; where each device displays the active game, cols. 4:52-58, 6:55-62, 11:7-22), with an outcome of the contest being determined based upon the comparison of the first and second status levels (cols. 4:46-58, 10:35-38).

Claim 44, a wireless tag module, which respectively transmits and receives a first profile information and a second profile information corresponding to the portable device and the second portable device, the first profile information and second profile information respectively accommodating association of the first and second characters with the portable device and the second portable device. Sitrick et al. disclose an RF tag module for transmitting profile information to other devices and for receiving profile information from other devices (acoustic interface 134 of Figure 1 transmits and



receives profile information, in the form of game rules, and all other communications between all cards 301-307 of Figure 3).

### ***Response to Arguments***

Applicant's arguments filed 10/10/2006 have been fully considered but they are not persuasive.

Regarding claims 28-44, applicant argued Sitrick does not disclose or suggest, animated graphical display of a contest, shown in a synchronized single continuous even on both of the portable devices. As discussed above, Sitrick teaches multiple portable devices (ETCs, col. 6:30-42), wherein each device is associated with a character (col. 4:3-7), and connected (Fig. 3) to interact and play a game (col. 4:16-26). The game played is a synchronized contest involving the characters associated with the ETCs, where statistics of different persona are used to determine the winner of the contest (i.e. winner will gain wealth and the other will lose wealth, col. 9:15-56). Each device can provide an active game associated with a display (col. 4:53-58). A display such as an LCD is used to portray the individual ETC in an animated graphical representation (cols. 6:55-62, 11:12-31).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 3714

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

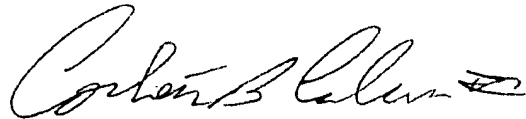
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jasson Yoo whose telephone number is (571)272-5563. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Olszewski Robert can be reached on (571)272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3714

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JHY

A handwritten signature in black ink, appearing to read "Corbett B. Coburn", followed by a stylized flourish or checkmark.

**CORBETT B. COBURN  
PRIMARY EXAMINER**